85-2162

NO.

Supreme Court, U.S.
FILED
JUL 2 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

DR. I.P.S. SANDHU,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
STATE WATER CONTROL BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether the Petitioner was deprived the due protection afforded by "Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000(e) et seq," (employment discrimination on account of pronounced foreign appearance, accent, and other physical and cultural characteristics of a national origin group) by the arbitrary assignment from the bench in the U. S. District Court of the detrimental attribute of inflexibility, alleged as flowing from the Sikh religion of a naturalized American Sikh, who is among approximately 125,000 Sikhs residing in the United States and among 14 million throughout the world.

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OPINIONS BELOW

The Fourth Circuit's per curiam opinion, No. 85-1450 (February 28, 1986), No. 85-1450 (April 7, 1986), and the District Court's Findings of Fact and Conclusions of Law are set forth in Appendices A, B, and C.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on April 7, 1986. This petition was filed within ninety days thereafter. This Court's jurisdiction is invoked under 28 U.S.C. Section 1343.

STATUTORY PROVISION INVOLVED

The federal statute involved in this case is 42 U.S.C. 2000(e) et seq.

STATEMENT OF THE CASE

The Petitioner is an Asian Indian whose education includes a B.A., a B.S., two M.S.'s, and a Ph.D. in Civil Engineering, which he received from Virginia Polytechnic Institute in 1979. Beginning in 1976, he was Assistant to the Director of Applied Technology of the Virginia State Water Control Board's Regional Office in Richmond for approximately one year. In that capacity, he supervised the Municipal and Industrial Divisions. In January, 1979, he was made the chief of the Municipal

Section. He held this position for about five months when he was removed from this position without assigning any reason. Pursuant to his removal, the Petitioner filed a grievance on July 16, 1979.

He was pursuing with the management the matter of his removal from the position of chief of the Municipal Section when he was intimidated and discouraged to take up the issue any further. In about the same time period, two positions opened. The position of Water Regional Office Director was posted on April 24, 1981, about a month before the intimidation date of May 12, 1981. The other position of Water Resources Planning Director was posted on June 5, 1981, about three weeks after the intimidating incident.

The Petitioner applied for both of these positions. He was denied an interview to the first on the ground that he did not have administrative and supervisory experience during the last ten years. This criterion was added in violation of the State's standard employment policy and was designed to discredit Petitioner's 16 years of administrative and supervisory experience in his native country. The process of evaluating the interviewees for the second position was manipulated so that the Petitioner received the lowest rating and thus denied the position on a pretextual basis. Both denials were preceded by the Petitioner's filing of a grievance. A white male who did not meet even the minimal qualifications for being interviewed was in fact interviewed and preselected for the po-

sition. Apart from a thorough knowledge of principles of water resources engineering and the skills and abilities to apply them, the job advertisement required possession of one of the following degrees in engineering: Civil, Hydraulic, & Sanitary or Agricultural. The white male preselected for the job had none of these degrees, nor any experience in the field of water resources engineering.

The United States District Court for the Eastern District of Virginia, in its Findings of Fact and Conclusions of Law, justified the preselected candidate's non-job-related degree in chemistry in merely the following words: "If you learn a hard science, you learn how to deal with hard facts . . ." (Tr. at Page A-3).

The Court also framed its own criterion of "cajolery and persuasion" in order to justify the preselection of the candidate as being a necessary requirement for the job.

The Court climaxed its verdict by arbitrarily assigning the Petitioner a detrimental trait of inflexibility and thus denying him the proper protection of the Title VII of the Civil Rights Act of 1964, as explained below in the section on "Reasons For Granting The Writ."

REASONS FOR GRANTING THE WRIT

THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT RICHMOND, DEPRIVED THE PETITIONER THE DUE PROTECTION AFFORDED BY "TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED, 42 U.S.C 2000(e) ET SEQ," (EMPLOYMENT DISCRIMINATION

ON ACCOUNT OF PRONOUNCED FOREIGN APPEARANCE, ACCENT, AND OTHER PHYSICAL AND CULTURAL CHARACTERISTICS OF A NATIONAL ORIGIN GROUP) BY THE ARBITRARY ASSIGNMENT OF THE DETRIMENTAL ATTRIBUTE OF INFLEXIBILITY, ALLEGED AS FLOWING FROM THE SIKH RELIGION OF A NATURALIZED AMERICAN SIKH.

The above notion is contained in the following words from the Findings of Fact and Conclusions of Law:

"It could be argued that it is indigenous to the Sikh that he is inflexible, and that, thus, to set flexibility up as a criteria (sic) is to discriminate against persons who are Sikhs. I don't believe that the law goes that far. I don't think that one can have an attribute which he claims to be an attribute of his foreign origin, and put that forward as an attribute, though detrimental to the job,

that must be disregarded. The purpose of Title VII, as was clearly apparent in the language of Title VII, is that persons not be discriminated against on the basis of national origin. But it didn't say that attributes of national origin which are detrimental to the job must be ignored."
(Tr. at Page A-6)

42 U.S.C. Section 1606.1, "defines national origin discrimination broadly, as including, but not limited to, the denial of equal opportunity because of an individual's, or his or her ancestor's, place of origin; or because an individual has the physical, cultural or linguistic characteristics of a national origin group."

The defendant's staff violated

the above provisions (1) by telling the Petitioner that the agency's clients did not want him to be seen in meetings, just as customers in a department store do not want to see a fat lady behind the counter, and (2) by stating that the Petitioner would not be considered for advancement within the agency because his name was difficult, because he looked different and his looks were a strike against him in being considered for a supervisory position, and because he was of a different cultural background; therefore, he would not be accepted even if he remained in the United States for a hundred years.

42 U.S.C. Section 1606.2, states: "Title VII of the Civil Rights Act of 1964, as amended, protects individuals against employment discrimination on the basis of race, color, religion,

sex or national origin. The Title VII principles of disparate treatment and adverse impact equally apply to national origin discrimination."

The defendant's staff violated the above provisions when it willfully excluded the Petitioner from numerous meetings on the Petitioner's own projects during the period he was chief of the Municipal Section. The Petitioner was also prevented from attending a State Water Control Board meeting on June 30, 1980. He was excluded from these meetings because of his appearance, which included a turban and a netted beard. In short, the management felt that the Petitioner's presence in meetings would reflect unfavorably on the agency's image.

Obviously, when an employee is considered undesirable for attending

meetings and contacting the public, how can he ever hope to be given a supervisory position despite his professional qualifications - in which position he would have to come in contact with people within and without the agency?

The adverse impact of this policy was felt when the Petitioner was denied promotion on two occasions, in spite of his being the best qualified candidate for the two positions.

42 U.S.C. Section 1606.8(a), states: "The Commission has consistently held that harassment on the basis of national origin is a violation of Title VII."

In spite of the above provision, the Petitioner was subjected to various forms of harassment. In addition, his evaluation was drastically lowered from

3.8 to 2.8 in retaliation for his filing an employment discrimination complaint with the EEOC.

Also, the Court's bias on the evaluation issue is evident from the following statements taken from the Findings of Fact and Conclusions of Law:

(1) "If the boss cannot be the boss, why, he is not much of a boss." (Tr. at Page A-27)

(2) "I do not think that I am called upon to make a judgment as to whether Mr. Sandhu was right and Mr. Richwine was wrong. I merely observe that Mr. Richwine was the boss and Mr. Sandhu was not." (Tr. at Page A-27)

CONCLUSION

Because of the Court's bias and its arbitrary assignment of a detrimental attribute of inflexibility

allegedly flowing from the Petitioner's Sikh religion, which deprived him the protection of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000(e) et seq, the petition for writ of certiorari should be granted.

Respectfully submitted

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APPENDIX

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

THE COURT: Well, I don't think we have a big problem with credibility. And there aren't a whole lot of conflicts. The questions that I am immediately presented with are set forth as the controverted and unresolved issues; that is, whether or not Dr. Sandhu was discriminated against by the State Water Control Board under Title VII on the basis of national origin when it failed to hire him as the agency's Water Resources Planning Director in July of 1981; and secondly, whether Mr. Richwine's evaluation of Dr. Sandhu in 1982 at a 2.8 out of a possible 4.0 constituted retaliation under Title VII for Dr. Sandhu's having filed a complaint of employment dis-

crimination.

I agree with Mr. El-Amin that my own evaluation here is not dispositive. However, I think that it is fair to say that it carries considerable weight. The job description, both in the advertisement and in the testimony before me, calls for interagency and intra-agency cooperation and interaction. It also calls for interaction with local governments. And it calls for the ability to set forth clearly, and with perception, a present plan for future activity. That is what planning is all about.

I have no question in my mind that Mr. Hill is substantially superior to Dr. Sandhu in that capacity. It strikes me that no matter how well you may be able to carry out the technical functions of planning, how familiar you

are with the tools of the trade, with water, with impoundment of water, with the supply of water, with the distribution of water, with the water needs, if you are not able to communicate that knowledge to others with whom you work, you will not be as valuable as someone who is able to. And I think Dr. Sandhu is able to communicate, to a substantial extent, his knowledge. But he is not nearly so capable as Mr. Hill is in that regard.

Dr. Sandhu's experience in the field of water, and the uses of water and water resources is, in my view, substantially superior to Mr. Hill's experience in that field. Mr. Hill says that if you learn a hard science, you learn how to deal with hard facts. And I don't think that there is any question that that is true. On the

other hand, if you spend years learning a hard science in water resources, and the other man spends years learning the hard science of chemistry, and you say, "Which is the best in water resources in that regard?" I don't think there is any question but what you would have to say the one who has dealt in the field, the one who studied in that field.

It came out in the evidence that in dealing with the regional planners, where, according to the evidence, better than 50 percent of the work is done, that the State Planner, the Agency, the Water Resources Planning Director, has no line authority. He is dependent in his dealing with the regional planners to, my words, cajolery and persuasion, but they were words which Mr. Hill adopted, and which is not contradicted

by other evidence. Now, which of these two candidates is better able to cajole and persuade?

I have no question, on the basis of their testimony before me, that Mr. Hill would be more successful or would be more apt to be successful in that regard. Mr. Hill seems to have that which everybody seems to want nowadays: flexibility; whereas, Dr. Sandhu appears to have a rather ramrod approach to things.

I'm not saying that in a given situation I wouldn't much prefer to have the ramrod rather than the flexible person. But if the given situation that I am talking about is one calling for cajolery and persuasion, then give me Mr. Flexible. If we are talking about standing up to tyranny, then give me Mr. Ramrod. It depends on the job

that you have at hand, which is the better and the more favorable attribute.

It could be argued that it is indigenous to the Sikh that he is inflexible, and that, thus, to set flexibility up as a criteria is to discriminate against persons who are Sikhs. I don't believe that the law goes that far. I don't think that one can have an attribute which he claims to be an attribute of his foreign origin, and put that forward as an attribute, though detrimental to the job, that must be disregarded. The purpose of Title VII, as was clearly apparent in the language of Title VII, is that persons not be discriminated against on the basis of national origin. But it didn't say that attributes of national origin which are detrimental to the job must be ignored.

I'm not sure that Dr. Sandhu's personality, as revealed by the evidence, is a result of his national origin or his religion. I'm merely saying if it is, then it is, nevertheless, not a basis upon which the claim asserted by Dr. Sandhu can be asserted.

The argument is made, and there is force in it, that so long as Dr. Sandhu used his slide rule and stuck with technical aspects of the type of work that he was involved in, so long as he was doing the foot-slogging, that everything was fine. But once he stepped out and said, "Let me call the cadence," why, then problems arose.

There are two reasons, at least two reasons--there could be many others --that might explain that. And one of them might be that people who were running the State Water Control Board

didn't want Indians calling the cadence. Another might be that they didn't want the particular person, who is Dr. Sandhu, calling the cadence, because of Dr. Sandhu's own attributes that are personal to him. I heard Dr. Sandhu state his reasons why he believes that it is the former, that is, that it is because he is an Indian. And I've heard the other witnesses called by the plaintiff state why it was the latter, or at least state--they did state why it was the latter, but they also stated that regardless of that, there were better people; there was a better person for this job than Dr. Sandhu. As a matter of fact, there were a number of better people there.

That is a conflict. And I am permitted, as I understand it under the motion, to resolve that conflict.

Mr. Jones' presentation certainly is disquieting. But considering all of the evidence, including particularly the reasonableness of Dr. Sandhu's own conclusions, conclusions which, as counsel explained, on the basis that while they might not be objectively true, one must consider, in a sense, the source and not hold it against him. To the contrary, I sympathize with a person who feels himself to be sinned against for things for which he is not responsible. More than that, for things for which he has every reason to be proud, as I'm sure Dr. Sandhu is proud and has every reason to be proud of his origins.

But the fact that I don't hold it against him doesn't mean that I have to credit his judgment. And I don't. I think his judgment is faulty in that

regard. Just as I have indicated, I think Mr. Lombard's judgment is faulty. And just as I gather, Mr. Bellanca thinks Mr. Lombard's judgment is faulty. And I assure you, I don't think his judgment is faulty because his name used to be Lombardi. That doesn't enter into it at all.

I also think that the record ought to show that not only do I appreciate the observations made by counsel for plaintiff about the perception that persons who perceive of themselves as oppressed minorities have; I have experienced it. I was a Republican in Southside Virginia 25 to 30 years ago. Now, those of you who weren't Republicans in Southside Virginia 25 or 30 years ago may say, "Oh, poff, piffle." But it wasn't that way. You couldn't get a loan at the bank. You say,

"Well, the reason you couldn't get a loan at the bank was because you were a young lawyer and didn't have any money." I thought it was because I was a Republican. I was a young lawyer and I didn't have any money, nor any assets. But I thought it was because I was a Republican. And I am still not sure I wasn't right.

So I understand the argument. I understand it as fully as one could understand it who is not an Indian in a case such as this. But that doesn't mean that the Court of law must give credit to those judgments and must accept those judgments. Actually, it tends to cut the other way. It is an acknowledged fact that one's judgment in that situation may be colored by the status that he is in and the skewed perceptions that he may have.

When it comes to retaliation, the argument which defendant makes is that the actual filing with EEO followed--I'll call it the December, 1981, evaluation, and thus, since the December, 1981, evaluation is consistent with the 1982 evaluation, the 1982 evaluation cannot be attributed to the intervening filing of an EEO charge. That is true.

However, I have ruled, and I think correctly, that that EEO charge is not the only EEO activity or EEO-related activity that Dr. Sandhu engaged in. And I believe that any such activity is activity which is protected from harassment. I don't think that the law says that only the filing of an EEO charge can be a basis for a subsequent charge of harassment. And Dr. Sandhu, according to the evidence, had earlier had some confrontations res-

pecting promotion, respecting attendance at meetings, respecting--the evidence developed to a certain extent the Fairfax meeting, but it seems to me there was also a meeting in Halifax--or maybe the witness doesn't know the difference between Halifax and Fairfax, though the difference is like the difference between night and day. In any event, there were several meetings. Legitimate business reasons were given for his not attending.

One of the reasons was, "Well, one of the other people was in the area who could cover it just as well." Another reason, with reference to a State board meeting, was that Mr. Bailey and some other gentleman were going to be there anyhow, and they could cover the area that Dr. Sandhu might be expected to cover. The general ban came from,

you might say, customer complaints up in Fairfax. Someone up in Fairfax that was with the United States Geological Survey said, in effect, "The man is not doing a good job; he is counterproductive, get him out of the way, don't let him appear."

That judgment on the part of someone with the United States Geological Survey was buttressed by Mr. Hill, who said that in a task force that he was associated with, particularly younger members of the task force felt, he judged, inhibited in their ability to participate in the discussion because of the dogmatic presentation by Dr. Sandhu. I thought it was interesting that that bit of testimony didn't come rushing from Mr. Hill's mouth, though in a sense it was in his interest. He was the antagonist in this question of

who should be appointed. That attribute that he named as being dogmatic, which he said later was softened into a very positive but no longer dogmatic attitude, is one that appears consistent with my own observations.

I've observed Dr. Sandhu during the course of the trial, and it has only been since I have started my opinion that he has settled back in his seat for the first time in two days. Prior to that time, he has been sitting ramrod-straight in his seat without touching the back of his seat, both legs before him and on the floor.

You say, "Well, come on, let's not have all this body language talk." I think that that is characteristic of Dr. Sandhu. I'm not saying that it is a bad characteristic. In a given situation, it would be just what one would

want as his ally or his leader. In another situation, it would be unproductive.

The testimony of Dr. Sandhu teaches me that Dr. Sandhu lives by certain principles that he learned as a child. And that those principles, whether or not they conform with the mores of this country, are principles that he has imposed upon himself. That is not a bad thing. That is a good thing. Would that we all would take the principles that we learned as children and apply them to our lives, despite the fact that they might run counter to the passing majority; that we do what we know to be right, and what we learned to be right, rather than simply swaying in the current of the moment. But it is not clear that Dr. Sandhu has the ability to permit a little grease bet-

ween himself and the people with whom he works. To the contrary, the evidence that I have seen, heard, and observed, is evidence of a prickly interface between Dr. Sandhu and those with whom he works.

This finding of mine explains what Dr. Sandhu perceived as harassment. It seems to me that it is simply the natural, human response to the activity, conduct, attitude that Dr. Sandhu displayed here in Court. Dr. Sandhu said that it was not proper in India to go to see one's superior without going through the chain of command. Dr. Sandhu says that that is, apparently, proper in the United States, but that he wouldn't do that. And yet, of course, he did. In a sense, he self-righteously denies doing, because it is contrary to his principle, that which he precisely

did so. Mr. Hill was not in the chain of command. And he goes to Mr. Hill and says, "Mr. Hill, get me an interview with the boss, Mr. Davis." He had overleaped at least two people in the chain of command when he sought that interview.

When his attention was called to the difference between his principle and his action, he simply denied it, and said that he thought that seeing Mr. Hill was appropriate, because Mr. Hill was associated with Mr. Bellanca and Mr. Bellanca was in the chain of command. It was Mr. Bellanca who had said "No, stop. This is it. Don't go any farther. The issue is dead."

I think it is consistent with what I have observed that Dr. Sandhu would contend that he is abiding by his principles, even in the face of evidence

out of his own mouth that he had not done so.

I want to add that I do not believe that when Dr. Sandhu did what I just described, that Dr. Sandhu was consciously and deliberately telling me something he believed to be untrue. I don't believe that. I simply think that it is a part of his personality that he does not want to do wrong, he does not want to violate his principles, he very strongly wants to do what his principles tell him to do, and when he does violate his principles, he is unable and unwilling to see that he has, honestly unable and unwilling to see.

That is where I find the harassment. That is to say, I find the harassment a perception on his part of a reaction to his personality. He attributes it to harassment. The finder of

fact attributes it to his own personality and his actions, which he has testified to.

There may be other findings of fact which I should add. I do, of course, find those matters which you all had stipulated to. I find those facts which you all agreed to in your proposed findings of fact and conclusions of law. I find the matters which I have related here from the bench, and I'm perfectly willing to find any additional facts which either of you believe are appropriate to be found, consistent, of course, with my overall view of the case.

MR. EL-AMIN: Your Honor, there is only one question, I think the second question, harassment, was one issue, but the downgrading of the 1981 performance appraisal--I don't think

that the Court, unless that was encompassed within the harassment issue, that the Court found as a matter of fact that that was a result of a legitimate business interest and not retaliation.

THE COURT: The 1981, that would have been the December 28th or 29th rating, of course, is not the subject of an actionable charge or complaint before me. The one before me is, and I quote, whether D. B. Richwine's evaluation of Dr. Sandhu's 1982 performance at 2.8 out of a possible 4.0 constituted retaliation under Title VII for Dr. Sandhu's having filed a complaint of employment discrimination. And so, the December, 1981, episode is, to a large extent, evidentiary. However, I'll be happy to find the facts on that explicitly.

Mr. Richwine had come to this station and taken over as director of the Piedmont Region on or about the 1st of July, 1981. That also was the first day of a new evaluation period, and the 30th of June, the day before, was the last day of the old evaluation period, the period which was covered by the December, 1981, evaluation. The person who, in the ordinary course of events, would have conducted that evaluation would have been, it seems to me, Mr. Bailey. Mr. Bailey, apparently, had some trouble with the evaluation. The nature of the trouble I'm not certain of, but the evidence indicates that Dr. Sandhu would not sign it or had some objections to it. That may be an incorrect conception on my part, and the nature of the grade leads me to wonder

why there would be any objection by Dr. Sandhu. But I know there was a problem connected with it. And that which Mr. Bailey should have handed in shortly after the 1st of July didn't get into draft form until about the third week of September.

By the third week of September, why, Mr. Richwine was in the saddle as the regional director. The draft of 21 September was signed by Mr. Bailey and signed by Mr. Cibulka, I believe it was. The record will show who the other person was that it was signed by. And apparently it was signed by Mr. Sandhu.

For some reason, which the evidence doesn't disclose to me with a degree of clarity that would permit me to make a finding of fact, even that wasn't final. And it continued to be digested and processed and pushed up

and down the bureaucratic ladder until sometime in December, and by then, it fell to Mr. Richwine to sign it as the person who was next above in the chain of command. Mr. Richwine, in the process, had developed less than positive views about Dr. Sandhu. He thought that the ratings that Dr. Sandhu had received were unjustified by Dr. Sandhu's performance. He was concerned with the effect of his signing the evaluation report as it then stood. He had a conversation with someone from the personnel area, and that person told him that if he signed it as it was, that that signature would indicate his agreement with and acceptance of the ratings.

Since he did not agree with or accept the ratings, he was unable to sign it as it was. He went through and put in the rating sheet those areas in

which he disagreed with the rating that had been given earlier by Mr. Bailey. He did not change Mr. Bailey's ratings. He simply pointed out in each case what his disagreement was with it.

His testimony was, and it is credible, that he did it for two reasons: he did it first because of the warning that he had received or the instructions that he had received that a simple signing without any indication of non-concurrence would show his acceptance and agreement. He wanted to make it clear that he neither accepted nor agreed.

Second, he said that he was the new boss, that he had already experienced a view toward Dr. Sandhu that would require that Dr. Sandhu change some of his approaches and practices were Dr. Sandhu to be a satisfactory or valued employee in the eyes of Mr.

Richwine. He determined that a way of informing Dr. Sandhu of the deficiencies that he, Richwine, perceived would be to put them down, put them down in the format of the evaluation form. He did so. He attempted to go over with Dr. Sandhu the nature of his comments so that he could reach an understanding with Dr. Sandhu.

There is a conflict of evidence as to how that conference proceeded and what the results might have been, but the recorded statement contemporaneous with the period was that Dr. Sandhu had indicated that he wanted to start with a clean slate, and that he would attempt to alter his attitude to be more suitable to Mr. Richwine. That is a rather unremarkable event when a new boss comes on the scene. He says, "This is the way I want things done," and it seems to me

that it is appropriate for the subordinates to say, "If that is the way the boss wants things done, I reckon that's the way I ought to do them."

So I find the comment that Mr. Richwine made consistent with my understanding of appropriate procedures. If the boss can't be the boss, why, he is not much of a boss.

The testimony here was that Mr. Sandhu had a different conception. He said that he was not willing to change, that he didn't promise to change, and that he saw no reason to change, because he was right and Mr. Richwine was wrong. And I don't think that I am called upon to make a judgment as to whether Mr. Sandhu was right and Mr. Richwine was wrong. I merely observe that Mr. Richwine was the boss and Mr. Sandhu was not. And under

those circumstances, it is appropriate for the subordinate to either conform his approach to the job to that of his superior, or get out of the job.

That view that I have mentioned there that, "I am right and my boss is wrong," was not limited to Dr. Sandhu's relationship with Mr. Richwine. That attitude was expressed by Dr. Sandhu in one way or another with respect to practically all of the bosses that he has had in the State Water Control Board since he has been with them. The count may be a little off, and it is not clear which ones were bosses, and when, but he has fundamental disagreement with Mr. Bailey, Mr. Richwine, Mr. Cibulka, Mr. Jones, and Mr. Bellanca, and he believes that Mr. Lombard and Mr. Ramsey have not been wrong in their approach to him in his job.

Everybody was out of step but John, when you come right down to it, but it so happens that everybody else were sergeants and John was the private.

Is there anything else that anybody wants me to find?

MR. EL-AMIN: No, sir.

THE COURT: What is that, a burnt child fears the fire?

MR. EL-AMIN: Excuse me?

THE COURT: When you said no, does that mean a burnt child fears the fire?

MR. EL-AMIN: Oh, no, sir. That's fine.

THE COURT: Fine. Well, of course, it follows that I must direct that judgment enter for the defendant, with cost. Is there anything further to be done?

MR. EL-AMIN: No, sir.

MS. LASERSON: No, Your Honor.

THE COURT: All right.

(Proceedings concluded at 4:45 p.m.)

CERTIFICATE OF REPORTER

I, Jeffrey B. Kull, CP, RPR, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Jeffrey B. Kull

JEFFREY B. KULL, CP, RPR

23 April 1985

DATE

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 85-1450

Dr. I.P.S. Sandhu,

Appellant,

versus

Commonwealth of Virginia,
State Water Control Board,

Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. D. Dortch Warriner, District Judge. (C/A No. 83-0441)

Submitted: December 30, 1985
Decided: February 28, 1986

Before WIDENER, WILKINSON and SNEEDEN, Circuit Judges.

(Dr. I.P.S. Sandhu, Appellant Pro Se. Gerald L. Baliles, Attorney General, Karen A. Laserson, Assistant Attorney General, Patrick A. O'Hare, Assistant Attorney General, for Appellee.)

PER CURIAM:

Dr. I.P.S. Sandhu, an Asian Indian, brought this action pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000(e) et seq. Trial was held on the issues of: (1) whether the State Water Control Board discriminated against him on the basis of national origin when it failed to promote him to Water Resources Planning Director; and (2) whether a low 1982 evaluation was in retaliation for Sandhu's filing an employment discrimination complaint. The district court found for defendants on both claims. As the decision was not

clearly erroneous, we affirm.

Because our review of the record and other materials before us indicates that it would not significantly aid the decisional process, we dispense with oral argument.

AFFIRMED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 85-1450

(Filed - April 7, 1986, U.S. Court of Appeals - Fourth Circuit)

Dr. I.P.S. Sandhu,

Appellant,

versus

Commonwealth of Virginia,
State Water Control Board,

Appellee.

O R D E R

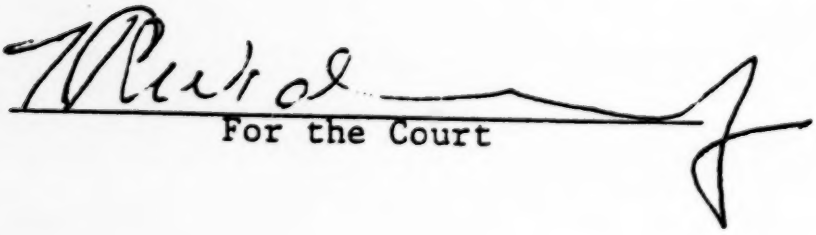
There having been no request for a poll of the court on the petition for rehearing en banc, it is accordingly ADJUDGED and ORDERED that the petition

for rehearing en banc shall be, and it hereby is, denied.

The panel has considered the petition for rehearing as well as the supplement to the petition filed by appellant and is of opinion the same are without merit.

It is accordingly ADJUDGED and ORDERED that the petition for rehearing shall be, and it hereby is, denied.

With the concurrence of Judge Wilkinson.



For the Court